UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMESE VALME,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER ELBERT VILLAVICENCIO, Shield #4367, DETECTIVE PETER MCCARTHY, Shield #4143, DETECTIVE PAUL MARCONI, Shield # 14831, POLICE OFFICERS JANE/JOHN DOE(S) #s 1-10,

Defendants.

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AMENDED COMPLAINT

PLAINTIFF DEMANDS TRIAL BY JURY

Case #: 14-cv-06991 SLT-MDG

PLAINTIFF JAMESE VALME, by her attorney DAVID A. ZELMAN, ESQ., for her COMPLAINT, alleges upon information and belief, as follows:

I. PRELIMINARY STATEMENT

1. This is a civil rights action in which JAMESE VALME (hereinafter "Plaintiff") seek damages to redress the deprivation, under color of state law, of rights secured to her under the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. On or about February 28, 2014, at approximately 1:00 A.M. at or near the intersection of Albany Avenue and Midwood Street in Brooklyn, NY, Plaintiff was arrested with excessive force and excessively detained by Defendants, including but not limited to POLICE OFFICER ELBERT VILLAVICENCIO, Shield #4367, DETECTIVE PETER MCCARTHY, Shield #4143, and POLICE OFFICERS JANE/JOHN DOE(S) (hereinafter "Defendants"). It is alleged that Defendants arrested and detained Plaintiff in violation of her constitutional rights. As a result of the violation of her constitutional rights, Plaintiff suffered physical and mental injuries.

II. JURISDICTION

2. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1343(3) and (4), which provides for original jurisdiction in this court of all suits brought pursuant to 42 U.S.C. § 1983, and by 28 U.S.C. §1331, which provides jurisdiction over all cases brought pursuant to the Constitution and laws of the United States. This Court has pendant jurisdiction over Plaintiff's state law claims.

III. PARTIES

3. Plaintiff JAMESE VALME at all times relevant hereto resided in Kings County, New York.

4. Defendant CITY OF NEW YORK (hereinafter "CITY") is a municipal corporation, incorporated pursuant to the laws of the State of New York, which operates the New York City Police Department (hereinafter "NYPD"), and as such is the public employer of the Defendant officers herein.

5. Defendant POLICE OFFICER ELBERT VILLAVICENCIO, Shield #4367 (hereinafter "VILLAVICENCIO") was an NYPD police officer, and at all times relevant hereto, acted in that capacity as agent, servant, and/or employee of Defendant CITY and within the scope of her employment. VILLAVICENCIO is sued in his official and individual capacity.

6. Defendant DETECTIVE PETER MCCARTHY, Shield #4143 (hereinafter "MCCARTHY") was an NYPD police officer, and at all times relevant hereto, acted in that capacity as agent, servant, and/or employee of Defendant CITY and within the scope of her employment. MCCARTHY is sued in his official and individual capacity.

7. Defendant DETECTIVE PAUL MARCONI, Shield # 14831 (hereinafter "MARCONI") was an NYPD police officer, and at all times relevant hereto, acted in that capacity as agent, servant, and/or employee of Defendant CITY and within the scope of her employment. MARCONI is sued in his official and individual capacity.

8. Defendants POLICE OFFICERS JANE/JOHN DOE(S) (hereinafter "DOE(S)") were NYPD police officers, and at all relevant times hereto, acted in that capacity as agents, servants, and/or employees of Defendant CITY and within the scope of her employment. DOE(S) are sued in her official and individual capacity.

9. At all relevant times hereto, Defendants were acting under the color of state and local law. Defendants are sued in their individual and official capacities. At all relevant times hereto, Defendant CITY was responsible for making and enforcing the policies of NYPD and was acting under the color of law, to wit, under the color of the statutes, ordinances, regulations, policies, customs and usages of the State of New York and/or the City of New York.

IV. FACTS

10. On or about February 28, 2014, at approximately 1:00 A.M., Plaintiff, a twenty-four year-old single mother, was lawfully at or near the intersection of Albany Avenue and Midwood Street in Brooklyn, NY after leaving a party she attended on the evening of February 27, 2014.

11. Defendants MCCARTHY and/or MARCONI, both undercover officers, assaulted an individual standing next to Plaintiff, without cause.

12. Plaintiff was then assaulted by MCCARTHY and/or MARCONI.

13. Plaintiff was then placed in a vehicle and transported to the 71st precinct.

14. At the precinct, Plaintiff was detained for approximately 2 hours.

15. Plaintiff was then transported to Central Booking, where she was detained for approximately 34 hours.

16. Plaintiff was arraigned on March 1, 2014, and charged with PL 240.20(1), Disorderly Conduct; PL 120.15, Menacing in the Third Degree; PL 195.05, Obstructing Governmental Administration in the Second Degree; 120.05(3), Assault in the Second Degree; and PL 205.30, Resisting Arrest. Plaintiff appeared in front of the court approximately twice following the arraignment, and pled guilty to Disorderly Conduct.

17. Plaintiff sustained a fractured foot by reason of the assault.

18. On or about the 14th day of April, 2014, Plaintiff' Notice of Claim and Intention to sue was duly served upon and filed with the CITY; said Notice was filed within ninety (90) days after the cause of action herein accrued and set forth the name and post office address of Plaintiff, the nature of the claim, the time when, the place where, the manner in which the claim arose and the items of damage and injuries sustained.

19. That at least thirty (30) days have elapsed since the demand or claim upon which these actions are predicated was presented to CITY for adjustment or payment thereof and that it has neglected and/or refused to make adjustment or payment thereof.

V. FIRST CAUSE OF ACTION
Pursuant to §1983 (EXCESSIVE FORCE)

20. Paragraphs 1 through 19 are hereby realleged and incorporated by reference herein.

21. That the incident that resulted from the intentional application of physical force by Defendants constituted a seizure. That the use of excessive force in effectuating the seizure was unreasonable under the circumstances.

22. That Defendants had no legal cause or reason to use excessive force in effectuating VALME's arrest or after VALME was arrested and in custody.

23. That Defendants violated VALME's Fourth and Fourteenth Amendment right to be free from unreasonable seizures when they used excessive force against him.

24. That at the time of the arrest or while in custody, VALME did not pose a threat to the safety of the arresting officers.

25. That VALME was not actively resisting arrest or attempting to evade arrest.

26. That Defendant CITY, through its officers, agents, and employees, unlawfully subjected VALME to excessive force while effectuating her arrest.

27. That Defendants' actions were grossly disproportionate to the need for action and were unreasonable under the circumstances.

28. That by reason of Defendants acts and omissions, acting under color of state law and within the scope of her authority, in gross and wanton disregard of VALME's rights, subjected VALME to excessive force while effectuating her arrest, in violation of her rights pursuant to the Fourth and Fourteenth Amendments of the United States Constitution.

29. That Defendants had the opportunity to intervene, and failed to do so, to prevent violations of VALME's civil rights, including but not limited to the right to be free from the application of excessive force.

30. That upon information and belief, in 2014, Defendants and CITY had a policy or routine practice of using excessive force when effectuating arrests.

31. That upon information and belief, it was the policy and/or custom of defendant CITY to inadequately train, supervise, discipline, and/or terminate their officers, staff, agents and

employees, thereby failing to adequately discourage further constitutional violations on the part of their officers, staff, agents and employees.

32. That as a result of the above described policies and customs, the officers, staff, agents and employees of defendant CITY, believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

33. That the above described policies and customs demonstrate a deliberate indifference on the part of the policymakers of Defendant CITY to the constitutional rights of arrestees and were the cause of the violations of VALME's rights alleged herein.

34. By reason of the foregoing, VALME suffered physical injuries, mental injuries, emotional injuries, economic injury, trauma, humiliation, terror, damage to reputation, and other psychological injuries. All of said injuries may be permanent.

VI. SECOND CAUSE OF ACTION
Pursuant to State Law (EXCESSIVE FORCE)

35. Paragraphs 1 through 34 are hereby realleged and incorporated by reference herein.

36. That the incident that resulted from the intentional application of physical force by Defendants constituted a seizure.

37. That the use of excessive force in effectuating the seizure was unreasonable under the circumstances.

38. That Defendants had no legal cause or reason to use excessive force in effectuating VALME's arrest or after VALME was arrested and in custody.

39. That at the time of the arrest, VALME did not pose a threat to the safety of the arresting officers.

40. That VALME was not actively resisting arrest or attempting to evade arrest.

41. That Defendants' actions were grossly disproportionate to the need for action and were unreasonable under the circumstances.

42. That by reason of Defendants acts and omissions, Defendants, acting under color of state law and within the scope of their authority, in gross and wanton disregard of VALME's rights, subjected VALME to excessive force while effectuating her arrest, in violation of the laws of the State of New York.

43. That Defendants had the opportunity to intervene, and failed to do so, to prevent violations of VALME's civil rights, including but not limited to the right to be free from the application of excessive force.

44. By reason of the foregoing, VALME suffered physical injuries, mental injuries, emotional injuries, economic injury, trauma, humiliation, terror, damage to reputation, and other psychological injuries. All of said injuries may be permanent.

VII. THIRD CAUSE OF ACTION
Pursuant to § 1983 (EXCESSIVE PRE-ARRAIGNMENT DETENTION)

45. Paragraphs 1 through 44 are hereby realleged and incorporated by reference herein.

46. That Defendants had no legal cause nor excuse to detain Plaintiff for a prolonged period prior to arraignment.

47. That Defendants detained Plaintiff excessively prior to arraignment in violation of Plaintiff's civil rights.

48. That Defendants detained Plaintiff with ill will and/or negligently.

49. That Defendants should have expeditiously investigated this matter and released Plaintiff.

50. By reason of Defendant's acts and omissions, Defendants, acting under color of state law and within the scope of its authority, in gross and wanton disregard of Plaintiff's rights, deprived Plaintiff of her liberty when it subjected her to an unlawful, illegal and

excessive detention, in violation of her due process rights pursuant to the Fourth and Fourteenth Amendments of the United States Constitution and the laws of the State of New York.

51. That in so acting, Defendant CITY, abused its power and authority as policymaker of the New York City Police Department under the color of State and/or local law.

52. That upon information and belief, in 2014, Defendant CITY had a policy or routine practice of detaining and imprisoning individuals for excessive periods prior to arraignment.

53. That upon information and belief, it was the policy and/or custom of Defendant CITY to inadequately train and supervise their officers, staff, agents and employees, thereby failing to adequately discourage further constitutional violations on the part of their officers, staff, agents and employees.

54. That as a result of the above described policies and customs, the officers, staff, agents and employees of Defendant CITY believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

55. That the above described policies and customs demonstrate a deliberate indifference on the part of the policymakers of Defendant NYPD to the constitutional rights of arrestees and were the cause of the violations of Plaintiff's rights alleged herein.

56. That Defendant, through its officers, agents and employees, unlawfully incarcerated Plaintiff for an excessive period of time prior to arraignment.

57. By reason of the foregoing, Plaintiff suffered mental injuries, economic injury, deprivation of property, liberty and privacy, terror, humiliation, damage to reputation and other psychological injuries. All of said injuries may be permanent.

VIII. FOURTH CAUSE OF ACTION
Pursuant to State Law (PRE-ARRAIGNMENT DELAY)

58. Paragraphs 1 through 57 are hereby realleged and incorporated by reference herein.

59. Defendants negligently and/or intentionally failed to arraign Plaintiff promptly following her arrest as required by New York State and Federal laws, rules, regulations and statutes.

60. Said failure to promptly arraign Plaintiff caused her arrest to be void ab initio.

61. As a result of the above constitutionally impermissible conduct, plaintiff was caused to suffer personal injuries, violation of civil rights, economic damages, emotional distress, anguish, anxiety, fear, humiliation, loss of freedom and damage to her reputation and standing within her community.

IX. FIFTH CAUSE OF ACTION
Pursuant to State Law (RESPONDEAT SUPERIOR)

62. Paragraphs 1 through 61 are hereby realleged and incorporated by reference herein.

63. That Defendants were acting in furtherance of the duties owed to her employer, defendant CITY.

64. That at all times Defendants were acting within the scope of her employment.

65. That Defendant CITY was able to exercise control over Defendants activities.

66. That Defendant CITY is liable for Defendants actions under the doctrine of respondeat superior. By reason of the foregoing, Plaintiff suffered physical injuries, mental injuries, emotional injuries, economic injury, trauma, humiliation, terror, damage to reputation, and other psychological injuries. All of said injuries may be permanent.

X. SIXTH CAUSE OF ACTION
Pursuant to §1983 (FAILURE TO INTERVENE)

67. Paragraphs 1 through 66 are hereby realleged and incorporated by reference herein.

68. That Defendants failed to intervene when Defendants knew or should have known that VALME's constitutional rights were being violated.

69. That Defendants had a realistic opportunity to intervene on behalf of VALME, whose constitutional rights were being violated in their presence.

70. That a reasonable person in the Defendants' position would know that VALME's constitutional rights were being violated.

71. That by reason of Defendants' acts and omissions, Defendants, acting under the color of state law and within the scope of their authority, in gross and wanton disregard of VALME's rights, deprived VALME of her liberty when they failed to intervene to protect her from Defendants' use of excessive force, in violation of VALME's rights pursuant to Fourteenth Amendment of the United States Constitution.

72. That upon information and belief, Defendants had a policy and /or custom of failing to intervene to protect citizens from excessive force by police officers. Thus, as a result of the above described policies and customs, VALME was not protected from Defendants' unconstitutional actions.

73. That upon information and belief it was the policy and/or custom of defendant CITY to inadequately hire, train, supervise, discipline and/or terminate their officers, staff, agents and employees, thereby failing to adequately discourage further constitutional violations on the part of their officers, staff, agents, and employees.

74. That as a result of the above described policies and customs, defendant CITY, its staff, agents and employees of defendant CITY believed that their actions would not be

properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

75. That the above described policies and customs demonstrate a deliberate indifference on the part of the policymakers of defendant CITY to the constitutional rights of detainees and were the cause of the violations of VALME's rights alleged herein.

76. That in so acting, defendant CITY abused its power and authority as policymaker of the NYPD under the color of State and/or local law.

77. That by reason of the foregoing, VALME suffered physical and psychological injuries, traumatic stress, mental anguish, economic damages including attorney's fees, damage to reputation, shame, humiliation, and indignity. All of said injuries may be permanent.

XI. SEVENTH CAUSE OF ACTION
Pursuant to State Law (Assault and Battery)

78. Paragraphs 1 through 77 are hereby realleged and incorporated by reference herein.

79. That Defendants intended to cause harmful bodily contact to VALME.

80. That defendant Defendants, in a hostile manner, voluntarily caused VALME'S injuries.

81. That Defendants' contact with VALME constituted a battery in violation of the laws of the State of New York.

82. That by reason of the foregoing, VALME suffered physical injuries, mental injuries, emotional injuries, economic injury, trauma, humiliation, terror, damage to reputation, and other psychological injuries. All of said injuries may be permanent.

INJURY AND DAMAGES

As a result of the acts and conduct complained of herein, Plaintiff have suffered and will continue to suffer, physical pain, emotional pain, suffering, permanent disability, inconvenience, injury to her reputation, loss of enjoyment of life, loss of liberty and other non-pecuniary losses. Plaintiff has further experienced severe emotional and physical distress.

WHEREFORE, Plaintiff respectfully request that judgment be entered:

1. Awarding Plaintiff compensatory damages in a full and fair sum to be determined by a jury;
2. Awarding Plaintiff punitive damages in an amount to be determined by a jury;
3. Awarding Plaintiff interest from February 28, 2014;
4. Awarding Plaintiff reasonable attorneys' fees pursuant to 42 USC §1988; and
5. Granting such other and further relief as to this Court deems proper.

DATED: Brooklyn, New York
June 16, 2016

/S

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